Kim J Dockstader, ISB No. 4207
Gregory C. Tollefson, ISB No. 5643
STOEL RIVES LLP
101 South Capitol Boulevard, Suite 1900
Boise, ID 83702-5958
Telephone: (208) 389-9000
Facsimile: (208) 389-9040
kjdockstader@stoel.com
gctollefson@stoel.com

Attorneys for Defendant
Micron Electronics, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL B. HINCKLEY, JACQUELINE T. HLADUN, MARILYN J. CRAIG, JEFFERY P. CLEVENGER, and TIMOTHY C. KAUFMANN, individually and on behalf of those similarly situated,

Plaintiffs,

v.

MICRON ELECTRONICS, INC., a Minnesota corporation,

Defendant.

Case No. CIV 01-0244-S-BLW

DEFENDANT MICRON ELECTRONICS, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT RE STATUTES OF LIMITATION

TABLE OF CONTENTS

Defendant Micron Electronics, Inc. ("MEI"), by and through its counsel, submits this Memorandum in Support of Partial Summary Judgment Re Statutes of Limitation.

I. INTRODUCTION

MEI moves for partial summary judgment to dismiss from the lawsuit those claims that are time barred and to further limit the time period for which Plaintiffs' remaining claims may be asserted. Pursuant to the federal Fair Labor Standards Act (the "FLSA") and the Idaho Wage Claim Act, a separate cause of action accrues each time a paycheck is issued in alleged violation of the law, and the statutes of limitation run as to that individual claim until tolled either by agreement or by commencement of an action.

"Commencement of an action" has different meanings for the purposes of applying the applicable federal and state statutes of limitation.[1] For FLSA purposes, commencement for both named Plaintiffs and later opt-in claimants occurs when notices of claim are filed with the Court. For the state wage claims, commencement occurs for named Plaintiffs when they are included in an amended pleading filed with the Court, and occurs for the later opt-in claimants, at the earliest, upon each claimant's filing a consent with the Court.

Thus, the dates necessary to apply the statutes of limitation include employment dates, since one must be employed in order to earn a paycheck, and filing dates. Because these dates are not in dispute and, in fact, cannot be disputed, the Court should apply the statutes of limitation as a matter of law. For those claims filed after the applicable statute of limitation has

[1] For purposes of all FLSA claims in this action, MEI asserts that a two-year statutory limitation period applies. *See* Section III.E *infra*. A shorter limitation period (*i.e.* six months) applies to all state-based wage claims (if any) that are asserted by Plaintiffs in this action. *See* Section III.F *infra*.

run, no relief may be sought and dismissal should be granted as a matter of law. In addition, for those state and federal claims remaining, the time period for which relief may be obtained is strictly limited to those paychecks issued within the applicable limitation period.

II. PROCEDURAL POSTURE AND FACTUAL BACKGROUND

Plaintiffs filed this suit as a collective action on behalf of themselves and other inside sales representatives employed by various MEI subsidiaries. Plaintiffs allege that MEI (1) induced them to work off the clock, (2) allowed managers to alter employee timecards, (3) failed to calculate overtime pay accurately, (4) discouraged employees from keeping accurate time records, and (5) suppressed wage claims in violation of FLSA, 29 U.S.C.A. § 200, *et seq.*, and Idaho's wage laws. (Second Amended Complaint ¶¶ 2, 60-62, 66 (Docket No. 94).)

The initial Complaint, filed June 1, 2001, had one named Plaintiff: Kimberley Smith. The First Amended Complaint, filed one week later, was substantially the same as the original Complaint, with the addition of a second named Plaintiff: Michael B. Hinckley. The Second Amended Complaint, filed April 23, 2002, had four additional named Plaintiffs: Jacqueline T. Hladun, Marilyn J. Craig, Jeffery P. Clevenger, and Timothy C. Kaufmann. All six Plaintiffs filed their complaints on behalf of themselves and others similarly situated in an attempt to certify the suit as a collective action under Section 16(b) of the FLSA. 29 U.S.C.A. § 216(b).

Section 16(b) of the FLSA authorizes an employee to bring a collective action on behalf of similarly situated employees. 29 U.S.C.A. § 216(b). Each employee who decides to join the action must opt in to the suit by filing with the district court a written consent to sue. *Id.*

The Court ultimately decides whether the suit is appropriately designated as a collective action. In addressing the collective-action issue, the Court ordered a two-step FLSA class

certification process. At the preliminary stage, after briefing and a hearing, the district court determined under a lenient standard that the claimants made an initial showing that potential class members are similarly situated. (September 27, 2002 Order (Docket No. 155).) Thus, the Court conditionally certified the class and allowed Plaintiffs to send notice of the suit to other potential class members. (*Id.*) Plaintiffs were responsible for filing the original consent forms with the Court. (Stipulation Re: Provision of Notice ¶ 2 (Docket No. 160).)

During the second phase of certification, the Court will look at those Plaintiffs and claimants who have opted to join the lawsuit and determine whether they are in fact truly similarly situated. The hearing on the final determination of class certification will be held on September 22, 2004. (Amended Notice of Hearing on Final Class Certification (Docket No. 186.)

During the initial class certification proceedings and per Court order, the statutory limitation period on all claims was tolled for a total of 161 days. The first tolling period took place from April 3, 2002 to June 28, 2002. (March 12, 2002 Order on Stipulated Motion for Extension of Briefing and Discovery on Conditional Certification of FLSA Collective Action (Docket No. 90).) The second tolling period took place from June 28, 2002 to September 11, 2002. (May 28, 2002 Order Re: Stay and Scheduling (Docket No. 98).) Thus, for any claims still viable on April 3, 2002, the statute of limitation period was tolled for a period of 161 days before it started running again on September 12, 2002.

The parties attempted to mediate the dispute on June 28, 2002, to no avail. The parties held a second mediation on June 16, 2004, which did not resolve the dispute. The parties have

scheduled a third round of mediation on August 23 and 24, 2004. (February 20, 2004 Order Referring Case to Mediation (Docket No. 172).)

III. ARGUMENT

A. Motion for Summary Judgment Standard

Summary judgment shall be granted when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Once the moving party meets its burden of demonstrating the absence of a genuine issue of material fact, summary judgment will be mandated if the nonmoving party fails to make a showing sufficient to establish the existence of an element that is essential to the nonmoving party's case and upon which the nonmoving party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Determining which statute of limitation to apply is a question of law. *Sisseton-Wahpeton Sioux Tribe of Lake Traverse Indian Reservation N.D. & S.D. v. United States*, 895 F.2d 588, 591 (9th Cir. 1990). However, when the issue of limitation requires determination of when a claim begins to accrue, dismissal is appropriate when the evidence is so clear that there is no genuine issue of fact. *Id.*

Summary judgment is appropriate here, because the undisputed facts warrant application of the statutes of limitation as a matter of law. First, as a matter of law, the causes of action, whether under the FLSA or the Idaho Wage Claim Act, accrued when MEI caused paychecks to be issued in alleged violation of the law. Second, as a matter of law, the statutes of limitation run on each claim until a consent to sue is filed with the Court. Because the employment dates and

filing dates are not in dispute and cannot be disputed, the statutes of limitation can be applied as a matter of law.

B. The Federal and Idaho Statutes of Limitation Begin to Run on Each Claim When a Paycheck Is Issued in Alleged Violation of the Law

The applicable federal and state statutes of limitation begin to run when a cause of action accrues. The FLSA provides that an action to recover unpaid overtime compensation must be "commenced within two years *after the cause of action accrued*." 29 U.S.C.A. § 255(a) (emphasis added). Similarly, the Idaho Wage Claim Act provides that any action for additional wages must be "commenced within six (6) months *from the accrual of the cause of action*." I.C. § 45-614 (emphasis added).

A cause of action accrues upon each allegedly unlawful paycheck at the time the paycheck is issued. FLSA regulations expressly provide that the precise date the cause of action accrues is the regular payday on which the employee's paycheck for the workweek in question is normally issued. "A cause of action under the Fair Labor standards Act for ... unpaid overtime compensation ... 'accrues' when the employer fails to pay the required compensation for any workweek at the regular payday for the period in which the workweek ends." 29 C.F.R. § 790.21(b). FLSA case law further provides that "a cause of action accrues at each regular payday immediately following the work period during which the services were rendered for which the wage or overtime compensation is claimed." *Halferty v. Pulse Drug Co.*, 821 F.2d 261, 271, *modified on other grounds*, 826 F.2d 2 (5th Cir. 1987).

Although the Ninth Circuit has not yet had an opportunity to address in a published opinion the issue of when a cause of action accrues for overtime claims under the FLSA, it has

come to the same conclusion, that the Fifth Circuit reached in *Halferty*, in the context of an employer's failure to pay any wages at all. *See Biggs v. Wilson*, 1 F.3d 1537, 1540 (9th Cir. 1993) ("Statutes of limitation have to start running from some point, and the most logical point a cause of action for unpaid minimum wages or liquidated damages . . . accrues is the day the employee's paycheck is normally issued, but isn't.").

Moreover, the FLSA statute of limitation applies to each individual paycheck issued in alleged violation of the labor laws. "Each failure to pay overtime constitutes a *new* violation of the FLSA." *Knight v. Columbus, Ga.*, 19 F.3d 579, 581 (11th Cir. 1994) (emphasis added in original).

Although Idaho courts have not explicitly addressed the accrual issue, the text of the Idaho Wage Claim Act suggests that a separate cause of action accrues each time a paycheck is issued in violation of the law.

> [I]n the event salary or wages have been paid to any employee and such employee claims additional salary, wages, penalties or liquidated damages, because of work done or services performed during his employment *for the pay period covered by said payment, any action therefor* shall be commenced within six (6) months from the accrual of the cause of action.

I.C. § 45-614 (emphasis added). "[A]ny action therefor" refers to the specific pay period covered by the payment. Thus, the state statute of limitation also applies to each individual paycheck issued in alleged violation of the state wage laws.[2]

[2] This is the approach adopted and recognized by the noted legal treatise, American Jurisprudence. *See* 48A Am. Jur. 2d Labor and Labor Relations § 4556 (1994) ("A cause of action accrues when an employer fails to pay required compensation for any workweek at the regular payday for the period in which the workweek ends.").

In sum, a cause of action under either the FLSA or state wage laws accrues each time a paycheck is issued in alleged violation of the law. Both statutes of limitation then run until tolled either by agreement or by commencement of an action.

C. Effect of Tolling Period: April 3, 2002 to September 11, 2002

In applying the relevant statutes of limitation to Plaintiffs' federal and state claims, the 161-day tolling period between April 3, 2002 and September 11, 2002 must be considered. Thus, each claim that was viable on April 3, 2002 enjoys what is essentially an extension of time in which to file an action, since the statute of limitation period does not run during the tolling period. *See Nerco Minerals Co. v. Morrison Knudsen Corp.*, No. 29352, 2004 WL 766721 (Idaho Apr. 12, 2004).

This tolling period has no effect on claims that were untimely before the tolling period began or claims for which consents were filed before the tolling period began. If the limitation period had already run on the claims by April 3, 2002, the claims are untimely, and the tolling period has no effect on them. In addition, because the FLSA limitation period stops running when consents are filed with the Court, the tolling agreement has no effect on claims for which consents were filed before April 3, 2002. Therefore, in order for the tolling period to have any effect on a claim, the claim must have been timely as of April 3, 2002 and the claimant must not have filed a consent as of that date.

D. The Federal and State Statutes of Limitation Run Until an Action Is Commenced

Both the applicable federal and state statutes of limitation provide that an action must be commenced within the statutory period.[3] However, what constitutes commencement of an action is different for the purposes of applying the federal and state statutes of limitation.

1. An Action Is Commenced under the Federal Statute of Limitation When a Consent Is Filed with the Court

In a FLSA collective action, the statute of limitation runs on each claim until the claimant opts in to the lawsuit by filing a consent with the court. This is true for named plaintiffs as well as later opt in claimants.

Because this lawsuit was filed as a collective action pursuant to the FLSA, any claimants who want to be included in the action must affirmatively opt in by filing a written consent with the Court to join the action. "No employee shall be a party plaintiff . . . unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought." 29 U.S.C.A. § 216(b).

Section 7 of the Portal-to-Portal Act provides that a FLSA collective action is not considered "commenced" for statute-of-limitation purposes until each consent is filed with the court:

> [I]n the case of a collective or class action instituted under [the FLSA] . . . it shall be considered to be commenced in the case of any individual claimant

---

[3] As described above, the FLSA provides that an action to recover unpaid overtime compensation must be "commenced within two years after the cause of action accrued." 29 U.S.C.A. § 255(a). Similarly, the Idaho Wage Claim Act provides that any action for additional wages must be "commenced within six (6) months from the accrual of the cause of action." I.C. § 45-614.

> (a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or
>
> (b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

29 U.S.C.A. § 256. Thus, a plain reading of the above statutory provision is that it allows the limitation period to run on named plaintiffs and later opt-in claimants until the notice of consent is filed. *See Mateo v. Auto Rental Co.*, 240 F.2d 831 (9th Cir. 1957) (holding that there is no logical inconsistency, since subsection (a) is in conjunctive and subsection (b) is in disjunctive).

In addition, U. S. Department of Labor regulations explicitly provide that a collective action is not commenced as to each individual claimant until the date the claimant files his or her consent with the court. 29 C.F.R. § 790.21(b). This approach is also supported by case law. *See Songu-Mbriwa v. Davis Mem'l Goodwill Indus.*, 144 F.R.D. 1, 2 (D.D.C. 1992) (holding that named plaintiff must also file written consent in order to join class, at least for statute-of-limitation purposes); *Grayson v. K Mart Corp.*, 79 F.3d 1086, 1106 (11th Cir. 1996) ("[O]nly a written consent to opt-in will toll the statute of limitations on an opt-in plaintiff's cause of action."); *Gjurovich v. Emmanuel's Marketplace, Inc.*, 282 F. Supp. 2d 101, 104 (S.D.N.Y. 2003) (holding that "only by 'opting in' will the statute of limitation on potential plaintiffs' claims be tolled" (internal quotation marks and citations omitted)). Furthermore, written consents filed after the filing of the complaint do not relate back to the date the complaint was filed. *Kuhn v. Philadelphia Elec. Co.*, 487 F. Supp. 974, 975 (E.D. Pa. 1980), *aff'd*, 745 F.2d 47 (3d Cir. 1984); *In re Food Lion, Inc.*, 151 F.3d 1029 (4th Cir. 1998) (unpublished). Therefore,

an action is commenced for the purposes of each claimant's FLSA claims when the consents are filed with the Court. These filing dates are not in dispute.

2. An Action Is Commenced Under the State Statute of Limitation upon Filing of Either an Amended Pleading or a Written Consent

To commence an action for the purposes of the state statute of limitation, a party must file a claim with the Court. For named Plaintiffs, this occurs when an amended pleading is filed. For later opt-in claimants, this occurs when he or she files consent with the Court. Because the filing dates are not in dispute, the Court can apply the statute of limitation as a matter of law.

An action is commenced under the Idaho Wage Claim Act when the plaintiff initiates a lawsuit or files a claim. *See Johnson v. Allied Stores Corp.*, 106 Idaho 363, 679 P.2d 640 (1984) (plaintiff commenced action when he initiated suit); *Callenders, Inc. v. Beckman*, 120 Idaho 169, 814 P.2d 429 (Ct. App. 1991) (plaintiff commenced action when he filed claim for wages); *Gilbert v. Moore*, 108 Idaho 165, 697 P.2d 1179 (1985) (plaintiff commenced action when he filed lawsuit). Further, because the statute of limitation applies to each claim and is, therefore, tied to each claimant, the limitation period runs on each claim until the individual claimant initiates a lawsuit or files a claim.

Here, the named Plaintiffs filed a claim for wages thus initiating the lawsuit and each named Plaintiff's action commenced when he or she filed a complaint or was named in an amended complaint. However, only six of the claimants are actually named in the lawsuit. The later opt-in claimants never actually commenced litigation by filing a complaint with the Court. Nevertheless, those claimants have initiated an action by opting in to the lawsuit pursuant to the FLSA collective-action procedures. Therefore, for the purposes of applying the state statute of

limitation to the opt-in claimants' state wage claims, the Court must look to the date of filing a consent as the date the civil action is commenced.

In sum, an action is commenced for the purposes of tolling the statute of limitation when the individual plaintiff or claimant joins the lawsuit. For named Plaintiffs, this occurs when they file a pleading or an amended pleading. For later opt-in claimants, an action is not commenced until the claimant files a consent with the Court. Either way, the applicable dates are reflected in the Court docket and may be applied as a matter of law.

E. Plaintiffs' FLSA Claims Should Be Dismissed or Limited in Scope to Reflect the Two-Year Statue of Limitation

Applying the FLSA's two-year statute of limitation period to the claims of Plaintiffs and opt-in claimants, as a matter of law, 20 claims must be dismissed from the lawsuit and the remaining 71 claims are limited in temporal scope. Moreover, even if the FLSA's three-year statute of limitation period were determined to apply, as a matter of law, 10 claims must still be dismissed and the remaining 81 must be limited in temporal scope. (*See* Affidavit of Kira Dale Pfisterer in Support of Micron Electronics Inc.'s Motion for Partial Summary Judgment Re Statutes of Limitation ("Pfisterer Aff.") Exhibit A (filed contemporaneously herewith.))

The applicable FLSA limitation period is two years. An action to recover unpaid overtime compensation must be "commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued." 29 U.S.C.A. § 255(a). Because Plaintiffs fail to put forth facts sufficient to establish that any alleged violation by MEI was willful, the two-year statute of limitation period applies to their FLSA claims.

To establish a willful violation, Plaintiffs must demonstrate that MEI either knew its conduct violated the FLSA or showed reckless disregard for whether its actions complied with the FLSA. *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988). Willfulness requires more than mere negligence. *Id.* Thus, if the employer acts unreasonably but not recklessly in determining its obligations under the FLSA, any violation is not willful. *Id.* at 135. Because Plaintiffs have failed to put forth any evidence necessary to demonstrate that MEI acted with the intent to circumvent the FLSA overtime requirements or recklessly disregarded the FLSA overtime requirements, Plaintiffs have failed to carry their burden in establishing willfulness, and thus the two-year statute of limitation period applies to Plaintiffs' FLSA claims.

Pursuant to the two-year statute of limitation period, each Plaintiff must file his or her claim under the FLSA within two years from the time he or she received the allegedly unlawful paycheck, or else such Plaintiff will forfeit the claim. Because the following opt-in claimants did not file their notices of claim in the time period, their FLSA claims are barred: (1) Stefanie Bistline, (2) David L. Blair, (3) Carlisle C. Burnette, (4) Alan C. Claflin, (5) Kevin J. Engle, (6) James C. Gibson, (7) Jared Hodges, (8) Michael Larscheid, (9) Steven W. Tom, (10) Camille Woodworth, (11) Kevin Aubert, (12) Matthew L. Hagman, (13) Michael F. Hazen, (14) David R. Kestner, (15) Marvin L. Masteller, (16) Robert McCarter, (17) Ginger North, (18) Thomas Robertson, (19) Patrick H. Worthington, and (20) Robert S. Wood. (*See* Pfisterer Aff. Ex. A.) In addition, the two-year statute of limitation limits the time period in which the remaining claimants may recover on their claims. (*Id.*)

F. Plaintiffs' Idaho State Wage Claims Should Be Dismissed or Limited in Scope to Reflect the Six-Month Statutory Limitation on Claims for Additional Compensation

Because no facts have been alleged or shown to support a minimum-wage claim, the state wage claim pleaded by Plaintiffs should be dismissed. Furthermore, assuming Plaintiffs intended (but notably failed) to assert a claim for additional wages under the Idaho Wage Claim Act, a six-month statute of limitation period applies, resulting in the dismissal of at least 66 claims under the Idaho Wage Claim Act and the further limitation of the temporal scope of any remaining claims. (*See* Pfisterer Aff. Ex. A.)

1. Plaintiffs' Claims Under Idaho Code § 44-1502(3) Must Be Dismissed

In the Second Amended Complaint, Plaintiffs assert that MEI's conduct "also violates the applicable state laws of its operations, including but not limited to Section 44-1502(3), Idaho Code." (Second Amended Complaint ¶ 66 (Docket No. 94).) However, Idaho Code § 44-1502(3) is part of Idaho's Minimum Wage Law. No facts have been alleged or shown in support of any minimum-wage violations, because there are no facts to support such a violation. Therefore, Plaintiffs' state wage claim under Idaho Code § 44-1502(3) must be dismissed.

2. Assuming (Arguendo) Plaintiffs Meant to Assert a Claim for Additional Overtime Compensation Pursuant to the Idaho Wage Claim Act, Such Claims Are Limited by a Six-Month Statute of Limitation

Because Plaintiffs seek payment for the alleged withholding of overtime pay under the FLSA, they arguably seek additional compensation. Accordingly, a six-month limitation period applies to any claim that Plaintiffs and claimants might assert under the Idaho Wage Claim Act.

Plaintiffs may have intended to assert, although they admittedly have not pled, a wage claim pursuant to Idaho Code § 45-615(1). "As an alternative to filing a wage claim with the department, any person may assert a wage claim arising under this chapter in any court of

competent jurisdiction or pursue any other remedy provided by law." I.C. § 45-615(1). A "wage claim" is defined as "an employee's claim against an employer for compensation for the employee's own personal services, and includes any wages, penalties, or damages provided by law to employees with a claim for unpaid wages." I.C. § 45-601(6). Because Plaintiffs' arguments for unpaid overtime and commissions are attributed to and were allegedly earned in a specific pay period, they may be considered (for purposes of this argument only) as claims under the Idaho Wage Claim Act.

The statute of limitation period applicable to an action for additional wages under the Idaho Wage Claim Act is six months:

> [I]n the event salary or wages have been paid to any employee and such employee claims additional salary, wages, penalties or liquidated damages, because of work done or services performed during his employment for the pay period covered by said payment, any action therefor shall be commenced within six (6) months from the accrual of the cause of action.

I.C. § 45-614. Because Plaintiffs admit they have been paid wages, they simply argue for additional compensation. Therefore, the six-month limitation period applies and each Plaintiff and claimant must have commenced the action within six months following accrual of his or her respective claim.

As a result of the application of the six-month statute of limitation, 66 state law claims must be dismissed. These include claims by (1) Laura Anderson, (2) Ryan Ball, (3) Destiny Baxter, (4) Stefanie Bistline, (5) David L. Blair, (6) Heidi M. Brady, (7) Michael Browning, (8) Carlisle C. Burnette, (9) Alan C. Claflin, (10) Jeffery P. Clevenger, (11) Rory Kip DeRouen, (12) Hector Dimas, (13) Shelly Dyer, (14) Heather Elliot, (15) Kevin J. Engle, (16) Eric

Fillmore, (17) Alan Garcia, (18) James C. Gibson, (19) Deborah E. Harris, (20) Kevin Henderson, (21) Beverly J. Hilliard, (22) Jared Hodges, (23) Dale Hope, (24) Randy P. Howell, (25) Timothy C. Kaufmann, (26) Ryan Keen, (27) Michael Larscheid, (28) Jay S. Madison, (29) Chris McCullough, (30) Charles K. McGuire, (31) Don McMurrian, (32) Stephen Miller, (33) Deborah Monahan, (34) Janice S. Nitz, (35) Chris Papero, (36) Susan Pierce, (37) Patrick Revels, (38) Cheryl L. Sanderson, (39) Carly D. Seader, (40) Rose Thies, (41) David A. Thom, (42) Steven W. Tom, (43) Nanette Westenhaver, (44) Camille Woodworth, (45) Kevin Aubert, (46) William Brinckerhoff, (47) Dennis Christensen, (48) Marilyn J. Craig, (49) Rickey S. Ferrara, (50) Julie Gardner, (51) Matthew L. Hagman, (52) Michael F. Hazen, (53) Jacqueline T. Hladun, (54) David R. Kestner, (55) Kurt Kluessendorf, (56) Linda C. Lee, (57) Erick Little, (58) Marvin L. Masteller, (59) Robert McCarter, (60) Mark R. McKenzie, (61) Ginger North, (62) Thomas Robertson, (63) Michelle Saari, (64) Matthew K. Severson, (65) Patrick H. Worthington, and (66) Robert S. Wood. (*See* Pfisterer Aff. Ex. A.) In addition, the six-month statute of limitation limits the time period in which the remaining claimants may seek to recover any additional compensation. (*Id.*)

IV. CONCLUSION

The Court should apply the federal and state statutes of limitation to Plaintiffs' overtime and wage claims as a matter of law, because the relevant dates defining the time frame of the claims, including employment dates and filing dates, are not in dispute and, in fact, cannot be disputed. In applying the statutes of limitation, 20 federal claims and 66 state claims must be dismissed. As a result, 20 claimants have no timely claims whatsoever and must be dismissed from the lawsuit altogether. In addition, applying the relevant statutes of limitation as a matter of

law will help define the temporal scope of the remaining claims at issue in this lawsuit and focus the scope of the litigation on this issue.

DATED this 17th day of June, 2004.

STOEL RIVES LLP

Kim J Dockstader
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 2004, I caused to be served a true copy of the foregoing **DEFENDANT MICRON ELECTRONICS, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT RE STATUTES OF LIMITATION** by the method indicated below, addressed to the following:

William H. Thomas
Daniel E. Williams
Christopher F. Huntley
HUNTLEY PARK ET AL.
250 South Fifth Street
PO Box 2188
Boise, Idaho 83701-2188

[ ] Via U. S. Mail
[X] Via Hand-Delivery
[ ] Via Overnight Delivery
[ ] Via Facsimile

Kim J Dockstader